

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT NEW YORK

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GABRIEL HERRERA and CURTIS :  
HENNAGER, individually and on behalf of all :  
others similarly situated, :

DANIEL ABBOTT, ELIZABETH AMMERMAN, :  
AMIR AZARCON, SEAN CONWAY, RYAN :  
INWARDS, BLAKE MARTIN, MADISON :  
MURPHY, CARLIN ROLLENHAGEN, :  
WINSTON TOLLIVER, DAVID UNICH, :  
DYLAN WARMACK, and FNAN YSAHAK, :  
individually, :

Plaintiffs,

- against -

COMME DES GARCONS, LTD., DOVER :  
STREET MARKET NEW YORK LLC, ELAINE :  
BEUTHER and JAMES GILCHRIST, :

Defendants. :  
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Case No. 21 CV 4929 (VEC)

**NOTICE OF MOTION**

**ORAL ARGUMENT REQUESTED**

**TO:**

Joshua Alexander Bernstein  
Josh Bernstein, P.C.  
160 Varick Street, 3<sup>rd</sup> Floor  
New York, New York 10013  
*Counsel for Plaintiffs*

**PLEASE TAKE NOTICE** that the undersigned attorneys for the defendants Dover Street Market New York LLC, Comme Des Garcons, Ltd., Elaine Beuther, and James Gilchrist (collectively, “Defendants”) will apply before the Honorable Judge Valerie E. Caproni of the Southern District of New York at the United States Courthouse, 40 Foley Square, New York, New York, in Courtroom 443, on a date to be determined by the Court, for an Order pursuant to Federal Rule of Civil Procedure 12(b)(6) dismissing the Second Amended Complaint in its entirety, with prejudice, for failure to state a cause of action. In support of this motion, Defendants rely upon the accompanying Memorandum of Law. Oral argument is requested.

**PLEASE TAKE FURTHER NOTICE** that, pursuant to the Local Civil Rule 6.1(b), any opposing affidavits and answering memoranda shall be served within fourteen days after service of these moving papers, and any reply affidavits and memoranda of law shall be served within seven days after service of the answering papers.

Dated: New York, New York.  
April 8, 2022

Respectfully submitted,

DAVIS WRIGHT TREMAINE LLP

By: /s/

Lyle S. Zuckerman

Michael Goettig

1251 Avenue of the Americas

21st Floor

New York, New York 10020

+1 (212) 603-6498

*Attorneys for Defendants Comme Des  
Garcons, Ltd., Dover Street Market New York  
LLC, Elaine Beuther, and James Gilchrist .*